

**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Commission Minutes

**Clarion Hotel
320 Hillsborough Street
Raleigh, NC 27603**

Thursday, February 25, 2010

Attending:

John R. Corne, Jennifer Brobst, Judith Ann Dempsey, Elizabeth MacMichael, Dr. Greg Olley, John Owen, Pamela Poteat, Jerry Ratley, Don Trobaugh, Dr. John Carbone, Debra Dihoff, Sandra DuPuy, Dr. John Haggerty, Matthew Harbin, Phillip Mooring, Beverly Morrow, Larry Pittman, David R. Turpin, Dr. James W. Finch, Joseph Kaiser

Excused Members:

Dr. Diana J. Antonacci, Dr. Richard Brunstetter, Dr. Thomas Gettelman, Nancy E. Moore, Emily Moore, Carl Higginbotham, Norman Carter, Cindy L. Ehlers, Thomas Fleetwood, Dorothy O'Neal, Elizabeth Ramos

Division Staff:

W. Denise Baker, Marta T. Hester, Amanda J. Reeder, Andrea Borden, J. Luckey Welsh, Michael Watson, Jim Jarrard, Michael Lancaster, Flo Stein, Michiele Elliott, William Bronson, Lynn Jones, Jason Reynolds, Gary Leonhardt, Theresa Edmondson

Others:

Tara Fields, Avis Mooring, Deanna Janus, Danny Freeman, Louise Fisher, Ann Rodriguez, Erin McLaughlin, Diane Pomper, Martha Brock, Molly Masich, Bobby Bryan, Joe DeLuca

Handouts:

1. NC Open Meetings Law
2. CABHA Presentation
3. MH/DD/SAS Services
4. Pilot Smoking Cessation Plan – Walter B. Jones ADATC
5. Role of the Rules Review Commission
6. DWI Rules – Comment Grid
7. Proposed Draft Rules – SA Services for DWI

Call to Order:

John R. Corne, Chairman, called the meeting to order at 8:35 a.m. He asked for a Moment of Reflection, and introductions from the members of the NC Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (Commission) and the public. Chairman Corne reviewed the ethics reminder and addressed Executive Order No. 34 regarding ethics and attendance standards for gubernatorial appointments to boards and commissions. This requires that individuals appointed by the Governor attend at least 75% of the meetings; the Order also reinforced the ban on gifts.

Approval of the Minutes:

Don Trobaugh stated that the reference in the minutes to \$20 million on page six of the mail-out packet should be \$226 million instead.

Upon motion, second and unanimous vote, the Commission approved the minutes of the November 2009 meeting with the recommended change.

NC Open Meetings Law Presentation:

Diane Pomper, Assistant Attorney General, NC Department of Justice, gave an overview of the NC Open Meetings Law in Lisa Corbett's stead. She advised notice of open meetings should be posted, given to all who request it, and filed with the Secretary of State's office. Ms. Pomper noted that materials disseminated at Commission meetings and the minutes produced are public record; she added that requests for materials related to Commission meetings should not be made to individual Commission members but to staff of the NC Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS).

Ms. Pomper responded as follows to the questions below:

- W. Denise Baker, Team Leader, Division Affairs Team, NC DMH/DD/SAS, asked who was responsible for the costs of responding to public requests for copies of material or minutes from a meeting. Ms. Pomper responded that the agency is allowed to charge a reasonable fee for copies.
- Mr. Trobaugh asked who maintains the records and how long they should be kept. Ms. Pomper stated that the NC DMH/DD/SAS provides administrative support to the Commission. Chairman Corne noted that records are generally kept three years and then archived for another period of time.
- John Owen noted that email addresses of Commission members are made public and asked if they can be contacted or lobbied on issues. Ms. Pomper stated that no one should lobby the Commission members directly; instead, they should come to the meetings to address the Commission.
- Larry Pittman asked if the public had a right to speak at public meetings. Ms. Pomper responded that this is not addressed in the law and it is the Commission's decision. However, she noted that the Commission provides time for public comment and advised that it would be appropriate for commissions and boards to hear from the public.

Director's Report:

Leza Wainwright, Director, NC Division of MH/DD/SAS was unable to attend the meeting and was represented by Flo Stein, Chief, Community Policy Management Section, NC Division of MH/DD/SAS and Jim Jarrard, Chief, Resource and Regulatory Management Section, NC Division of MH/DD/SAS.

Flo Stein updated the Commission on the following initiatives:

- Combat Veterans and their Families
- Access Study
- Adult Care Home Study
- Offender Re-entry
- Justice Reinvestment Program
- Utilization Management by Local Management Entities (LMEs) - EastPointe and Durham will be trained to conduct utilization management reviews.

Jim Jarrard gave an overview of the Division's financial outlook by advising that the Division continues to be about six to eight weeks behind in making payments to the LMEs based on the money the agency is receiving from the State budget. He further reiterated that the situation should be current by the summer. Last year the Division started at about \$24 million less than zero. Last summer, LMEs were expected to absorb a \$40 million cut. Mr. Jarrard continued by saying that State funds are not entitlement dollars and there is no entitlement to state-funded services. Mr. Jarrard added that most of our LMEs are single stream funding entities and have flexibility with their funds.

Mr. Jarrard received the following questions and comments from the Commission:

- Mr. Pittman asked how providers are responding to LMEs no longer having funds to provide services. Mr. Jarrard responded that providers have to deal with short falls on the part of LMEs and also rate cuts on the part of the Division of Medical Assistance (DMA). Mr. Jarrard stated that it is a difficult time for providers to sustain themselves.
- Debra Dihoff asked if Mr. Jarrard could discuss what the State is facing in terms of increased cuts. Mr. Jarrard responded that he could not answer that question for the Department, but Secretary Cansler sent a letter to the legislators saying he does not believe the Department can sustain further cuts. Mr. Jarrard further stated that Mr. Watson's presentation should show the alignment of priorities for the Department.
- Mr. Trobaugh asked if there were opportunities to receive corporate organizational sponsorship for the budget in the mental health category. Mr. Jarrard responded that the Division has a staff person looking for grant options that might be available to the Division.
- Dr. John Haggerty asked if there was anyone at the Division looking ahead to see what the impact would be on health care reform, if it were to pass, on mental health public services for North Carolina. Ms. Stein commented on the importance of the access study by the Institute of Medicine.
- Joseph Kaiser suggested that the system should take a look at the resources that are available on all levels.

J. Luckey Welsh, Director, NC Division of State Operated Healthcare Facilities (DSOHF), provided an overview of the state facilities. He addressed the following:

- Murdoch Center Program on Respite Care designed to serve children with moderate to profound intellectual disabilities in crisis who need services for a short period of time
- Failed merger of Dix and Central Regional Hospital – while the merger is not likely to happen in the foreseeable future it is expected to happen eventually. The costs to keep Dix Hospital operational exceed the \$6 million allotted in nonrecurring funds.
- Plans for construction of new Cherry Hospital
- Neuro-medical Centers – Longleaf Neuro-medical Center received a \$25,000 grant to renovate unoccupied spaces; this will enable residents to participate in a vast array of activities. The Black Mountain Neuro-Medical Treatment Center was recognized in USA Today as one of three long-term care facilities in Buncombe County that has achieved five out of five stars on the CMS quality rating scale.
- Alcohol and Drug Abuse Treatment Center (ADATC) presentation made to the Legislative Oversight Committee – the ADATCs have changed from a rehabilitative to an acute care model. However, the budgets have not been able to keep up with the demand for the types of staffing needed.

- The North Carolina New Organizational Vision Award (NC NOVA), which is a special award recognizing facilities that focuses upon the workplace culture in order to promote the retention and recruitment of a stable, quality direct care workforce.
- O'Berry Center is converting from an ICF-MR level of care to a specialized long-term care facility certified under nursing home regulations.

Mr. Welsh received the following questions and comments from the Commission:

- Ms. Dempsey asked about post-discharge plans for patients. Mr. Welsh stated that a discharge plan is done for everyone leaving a state facility; however, connecting to the community is still a challenge. Mr. Welsh added this is not because of lack of cooperation on the part of the community; sometimes it is the patient does not follow up with providers within the community.
- Betsy MacMichael stated that she noticed that, for the Murdoch Center Crises Respite, all referrals must go to the LME; staff from Murdoch Center are in the process of meeting with stakeholders. Ms. MacMichael expressed concern that parents in crisis might not follow-through with the LMEs and noted the importance of mental health service agencies being made aware of this service. Mr. Welsh agreed and further stated that as the service is developed it will be necessary that the community providers make this service known to consumers.
- Ms. Dihoff stated that one of the biggest barriers to discharge planning was getting the forms typed up in a timely manner, putting them in the hand of the person leaving the facilities, and getting them to the provider. Ms. Dihoff further stated that she was aware that North Carolina has received approximately \$20 million in Information Technology (IT) dollars for medical records improvements. Ms. Dihoff asked if Mr. Welsh could comment on where they were in the timeliness of those discharge plans and whether the state hospitals will benefit from the electronic records federal money. Mr. Welsh stated that the Secretary is interested in getting the funds.
- James Finch stated that the issue of follow-up is a wonderful opportunity for peer support connections. Dr. Finch further stated that there is a listing of psychiatric diagnoses and asked what the break down was on admission at ADATCs by substance of abuse. Mr. Welsh stated that he did not have that information on hand but noted that it could be obtained.

Critical Access Behavioral Health Agency (CABHA) Presentation:

Michael Watson, Assistant Secretary, NC Department of Health and Human Services, gave a presentation on the Critical Access Behavioral Health Agency (CABHA).

Mr. Watson received the following questions and comments from the Commission:

- Dr. John Haggerty asked if the Department will be able to go with a bundled case rate or will they need to wait for the waiver to come through when CABHA starts in July. Mr. Watson responded that the bundled case rate is part of the case management definition.
- Mr. Trobaugh asked if the savings the Department is projecting have been included in the budget. Mr. Watson replied that the reduction in the number of people getting services is what is being looked at in future budgets.
- Beverly Morrow stated that in the transition of providers becoming CABHAs the Department has a date of July 1st with 400 applications in the process. Ms. Morrow asked what would happen to consumers whose provider agency's application is still being processed on July 1, 2010. Mr. Watson responded that they will have to deal with transition issues and providers

will need to get service authorizations redone through Value Options. Effective July 1, 2010, Day Treatment, Intensive In-Home, and Community Support Team must be delivered by a CABHA certified provider.

- David Turpin asked Mr. Watson to address rumors that the effective start date for the CABHA (July 1, 2010) was not set in stone. Mr. Watson responded that the July 1st date is tied to the General Assembly telling the Department that community support has to end by that date.
- Pamela Poteat, asked, with the case rate at "so much" per consumer per month, will this be based on an acuity level or level of individual service needs. Mr. Watson stated that if someone looked at the case rate and took out the amount for CABHA, the rate buys about three and a half hours a month of case management. This cut is based on a \$42 million dollar reduction that was required of the Department in terms of cutting case management services across the Department.
- Jennifer Brobst asked if there would be a process for re-certification or de-certification. Mr. Watson stated that an agency can get certified in a site and can deliver services all over state. All of those sites have to be endorsed by an LME; if a CABHA loses its endorsement for one of the services that got them certified, it will lose its CABHA status.
- Sandra DuPuy asked if the provider is certified as a CABHA and can offer services anywhere in the state, which LME would be responsible for monitoring that provider? Mr. Watson responded that the LME responsible for monitoring the provider is the LME that granted CABHA certification to the provider. If the provider has site service specific endorsements in other LMEs they are also part of that monitoring process.
- Ms. Dihoff asked if we needed some vision as to where the CABHA needs to be located throughout the state, especially within the rural areas. Mr. Watson stated that we may find ourselves with choice and access issues; however, these are preferable to quality issues. Mr. Watson stated that they will be working with the LMEs regarding provider development where necessary.

Rules Committee Report

Jerry Ratley, Chairman, Rules Committee, advised that the rules on the Substance Abuse Services for DWI – 10A NCAC 27G .3800 and Drug Scheduling Rules – 10A NCAC 26F .0104 & .0105 were approved by the Rules Committee and would be presented today for review by the Commission. They also discussed updates on the Prison Rules – 10A NCAC, Subchapter 26D, explaining that the process to amend the rules has been underway for about three years. The counsel for the Rules Review Commission, in consultation for the Attorney General's office, informed the workgroup that the Commission does not have authority to promulgate rules regarding services for the developmentally disabled population within the Department of Correction (DOC). DOC has assured workgroup members that it has policies in place to ensure treatment for the developmentally disabled population in its custody.

Mr. Ratley directed the Commission to the handout on the Proposed Rulemaking Plan, adopted by the Rules Committee, and asked that the plan be proposed in the form of a motion to be voted on by the full Commission.

Upon motion, second and unanimous vote, the Commission approved the Proposed Rulemaking Plan (February – May 2010).

Advisory Committee Report

Larry Pittman, Chairman, Advisory Committee, advised that the issues discussed during the January 20th meeting were as follows: 1) Access to Healthcare; 2) Housing Initiatives; 3) Update on the Workforce Development Initiatives; and 4) Role of the Staff Definition Workgroup. Mr. Pittman further stated that the Advisory Committee discussed the 2010 priority for the Committee and there were a number of issues raised including access to healthcare, health disparities, mh/dd/sa populations, and future initiatives within the Division. Mr. Pittman stated that the Advisory Committee asked that leaders from the LMEs come to the next Advisory Committee meeting to discuss how the changes in community support and the CABHA initiatives are impacting the LMEs, and the providers. Mr. Pittman concluded the Committee has not submitted a formal priority list for its concentration during 2010; it was tabled from the last meeting to bring forth a formal list at the Commission meeting in May. Chairman Corne urged that the Advisory Committee submit the formal priority list to the Commission.

Proposed Amendment of 10A NCAC 26F .0104 & .0105 – Schedule III and Schedule IV:

William Bronson, Drug Control Unit Manager, Community Policy Management Section, NC Division of MH/DD/SAS, presented the proposed amendment of Rules 10A NCAC 26F. 0104 and .0105 – Schedule III and Schedule IV. Mr. Bronson proposed that these rules be amended to include substances that were added and classified by the Federal Department of Health and Human Services as follows:

1. Fosporopol, including its salts, isomers and salts of isomers whenever the existence of such salts isomers and salts of isomers is possible, placed in Schedule IV; and
2. Boldione, desoxymethyltestosterone, and 19-nor-4-,9(10)-androstadienedione and their salts, esters, and ethers placed in Schedule III.

The Commission for MH/DD/SAS has authority to schedule substances and amend the controlled substances schedules to conform with federal law. Mr. Bronson explained that amending these rules will maintain consistency with Federal DHHS scheduling. The proposed amendments were presented for final review and approval to forward for codification.

Upon motion, second and unanimous vote, the Commission approved the submission of 10A NCAC 26F .0104 & .0105 – Schedule III and Schedule IV for codification.

Update on Pilot Program to Prevent Smoking in Alcohol and Drug Abuse Treatment Centers (ADATCs)

Theresa Edmondson, Director, Walter B. Jones Center and Dr. Leonhardt, Director of Clinical Services, gave the presentation of the pilot program to prevent smoking in ADATCs. Ms. Edmondson gave a brief overview of the history of Walter B. Jones. Dr. Leonhardt gave the update on the pilot program designed for Walter B. Jones. Dr. Leonhardt stated that, for years, they had attempted smoking cessation with their patients; the staff has been very involved in this effort. Walter B. Jones has a fairly small population of the staff that continues to smoke; the facility has attempted to draw these staff members into their tobacco free committee. The patient involvement was conducted through a survey several months ago and, for the most part, patients do not think that quitting tobacco is the best idea when they are in the midst of trying to quit another substance. However, the literature suggests that it is just as easy to quit smoking in the midst of substance abuse treatment as it is to wait until afterwards. Most of the studies suggest that it actually improves the success rate of substance abuse treatment. Dr. Leonhardt stated that they are currently on target with all of their timelines; the one timeline that was not met was finding community support after discharge for their smokers. Chairman Corne asked if there was a higher incidence rate of tobacco addiction for people who are addicted to some other substance.

Dr. Leonhardt stated that an average of 80% - 90% of the patients smoke or use nicotine. Mr. Leonhardt closed by thanking the Commission for the opportunity to pilot the smoking cessation program at Walter B. Jones.

Proposed Amendment of 10A NCAC 27G .3800 – Substance Abuse Services for DWI Offenders

Lynn Jones and Jason Reynolds, Justice Systems Innovation Team, NC Division of MH/DD/SAS, presented the proposed amendment of 10A NCAC 27G .3800. Ms. Jones and Mr. Reynolds proposed that these rules be amended to include current statutory citations and language as well as include updated research based practices. In addition, they proposed that some rules be repealed in order to delete redundant language. These rules were presented to the External Advisory Team (“EAT”) prior to the Commission meeting; EAT approved of the proposed changes. The Commission has rulemaking authority for these rules.

The DWI Comment Grid comprised of comments from members of the Commission who volunteered to review the rules and submit written comments was presented and discussed. Ms. Jones informed the Commission that the majority of the comments will be incorporated within the rules.

Ms. Jones received the following questions and comments from the Commission regarding the rules indicated.

- Rule 10A NCAC 27G .3807: Dr. Finch stated that he was concerned because many people consider a diagnosis of illicit drug use a substance abuse problem based upon the definition contained within the DSM. Dr. Finch further stated that one of the consequences of having urine drug screen required by rule is that providers will be able to know if people have drug problems, which would ensure that more people will get treatment. Dr. Finch stated that he agreed with any use of an illicit drug does not necessarily mean that the person has a drug abuse problem, but if this were based upon the support criteria found within DSM, then this might be the consequence.
- Rule 10A NCAC 27G .3813: Mr. Owen suggested adding language to clearly state that clients must pay for their own interpreter to give them notice of this. Matthew Harbin asked why the language prohibited members of the offender’s family from serving as an interpreter for that client. Ms. Jones responded that offenders often wish to use children; there are a number of treatment issues that are not appropriate to address in the presence of children. Mr. Harbin expressed concern that the individual may not be able to afford the expense of paying for an interpreter. Ms. Dihoff stated that it should be the individual’s choice whether or not they may use a family member as an interpreter.
- Rule 10A NCAC 27G .3814: Dr. Finch asked if other documentation was available which more clearly defines the actual contents of the interventions for treatment. Dr. Finch stressed that the rule had two important aspects: 1) the assessment and 2) defining the treatment needed based on the assessment. Dr. Finch stated that he did not feel the proposed language defines the treatment an individual needs based upon the assessment; instead, the proposed rule simply lists things that a provider can do with anyone and is unclear regarding which treatment best matches the individual’s needs. Dr. Finch also noted the current language within the existing version of the rule does a better job of directing people to particular levels of care.

Ms. Jones directed the Commission to the handout “*Prime for Life Partnerships*”. Dr. Finch asked if the program described within the handout was used for the ADATCs and added that by definition, ADATCs are for people that do not have a substance abuse problem. Ms. Jones

stated that the program is being used in several states for both first time and repeat offenders. Ms. Jones further stated that other rules address the educational component and use an evidence-based practice, such as Seeking Safety, Motivational Interviewing, and the Matrix Model. Ms. Jones explained that the Division does not want to dictate a particular model because research is continuously evolving and the Division does not want to prevent providers from providing effective treatment. Ms. Jones continued by saying that many programs only offer the educational portion of the required treatment. Ms. Jones added that the Division is working to establish a standardized educational piece and then require evidence-based therapies. Dr. Finch suggested that this be articulated more clearly within the rule. Dr. Finch continued by stating that the rule as proposed for amendment is not clear, and a provider could pick and choose the form of treatment; given this, a provider could potentially give an entirely inappropriate treatment to an individual.

Upon motion, second and unanimous vote, the Commission approved the publication of 10A NCAC 27G .3800 – Substance Abuse Services for DWI Offenders

Presentation on the Role of the Rules Review Commission in the Rulemaking Process

Molly Masich, Codifier of Rules, Bobby Bryan, Rules Review Commission Counsel, and Joe DeLuca, Rules Review Commission Counsel, with the Office of Administrative Hearings (OAH) gave a presentation on the Rulemaking Process. Ms. Masich started the presentation by reviewing the initial process for filing rules with the OAH. Ms. Masich is responsible for overseeing the publication of proposed agency rules and the codification of permanent rules in NC Administrative Code. Ms. Masich stated that the rulemaking process is set out in the N.C. General Statute 150B. Ms. Masich and Bobby Bryan discussed the flow chart *Permanent Rulemaking Process*. Mr. Bryan also explained the membership and purpose of the Rules Review Commission (RRC).

Mr. Bryan indicated that all proposed rule language is reviewed as if it is new language being proposed for adoption; this includes current language of an existing rule. He described consideration of the following factors:

1. whether the agency has statutory authority for subject matter of the rule
2. whether the language is clear and unambiguous – whether those affected by the rule can read it and know what is expected of them
3. whether the agency complied with rulemaking procedures
4. whether the Office of State Budget Management (OSBM) has made a determination of the fiscal impact of the rule.

Mr. Bryan noted that when the RRC objects to a proposed rule the agency can respond by satisfying the objection or asking that the rule be returned; return of a rule is a rare option since it means that the agency will lose the rule even if it is an existing rule. If ten letters of objection are filed in response to a proposed rule, the rule is subject to legislative review.

The presenters from OAH received the following questions and comments from the Commission:

- Mr. Trobaugh stated that the rulemaking process in this state does not serve the public and referred to the document from the Division on the rules timeline and their status at the Office of State Budget Management (OSBM). Ms. Masich stated that the review by OSBM is not always a lengthy process.
- Chairman Corne asked how many rules historically have been held up in the legislature. Mr. Bryan stated that the ones that deal with environmental issues are more likely to get held up.

Mr. DeLuca further stated that a rule is not subject to legislative review until it has been approved by the RRC.

- Dr. Haggerty asked if a process exists where the RRC may say that one agency's rule is more important than another. Mr. DeLuca responded that every rule for every agency is treated the same and considered within the same time frame.
- In response to a series of questions regarding the role of OSBM in the rulemaking process and the delay in processing rules, Ms. Baker, Team Leader, Operations Support, NC Division of MH/DD/SAS, commented that each agency does their rulemaking in a different way. She noted that the Commission has chosen to do its rulemaking such that it reviews the rule twice before being sent to OAH for publication. Ms. Baker asked the Commission to keep in mind that the presenters were from the RRC and not the OSBM and stated that they would not likely be able to answer questions regarding OSBM's process of reviewing the fiscal narrative/note.
- Ms. Brobst asked if there is anything that the Commission could do to provide the RRC with information that may be helpful once the rule is published such as submitting reports to support the changes being recommended. Mr. DeLuca responded that the RRC defers to the expertise of the agency and their judgment regarding the propriety of the rule language. Mr. DeLuca stated the RRC considers whether there is statutory authority for the rule, whether the rule language is clear, and whether the rule change is necessary.

Public Comment:

Danny Freeman, Executive Director, NC Quality Care Provider Association addressed the Commission regarding concerns over the planned implementation of Critical Access Behavioral Health Agency (CABHA). Mr. Freeman stated that in general and in principal providers feel that CABHA is a good idea and anything that promotes a continuum of care which has the opportunity to improve care for mental health consumers is great. However, one of his concerns is that CABHA was never brought before the rulemaking process of this Commission to be processed as a rule. Chairman Corne stated he did not feel the Commission had the authority under statute to make the rules dealing with CABHA. Mr. Freeman stated that there are issues in the implementation of CABHA such as being mandated to have three staffing positions (Medical Director, Clinical Director, and a QA/QI Person), and the cost associated with this for small providers. Mr. Freeman opined that the requirement of 20 hours disproportionately burdens small providers; he noted, for example, that, in some instances, only 10 hours may be needed but a provider is mandated to provide 20. Mr. Freeman thanked the Commission members for the opportunity to address them.

Martha Brock, who identified herself as a mental health consumer, stated that there was only one mental health consumer on the Commission and she wanted to make sure that mental health consumer views were expressed. Ms. Brock described CABHA as a "sales pitch" and stated that many consumers are afraid of what will happen if CABHA is implemented. She asked the Commission to question the people in their area regarding what they think of CABHA because this change affects consumers directly.

Louise Fisher, a volunteer mental health advocate, commented that there are plenty of paid lobbyists for the large companies and that they do play a small role in this process.

Adjournment:

There being no further business the meeting adjourned at 4:00 pm.